



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-5171



James Lund
HC 73, Box 811
Alton Bay, NH 03810

Re: Alton Tax Map 42, Lot # 30

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND HEARING
No. AF 01-009**

February 28 ,2001

I. Introduction

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Water Division ("the Division") to James Lund, pursuant to RSA 483-B and Env-C 611. The Division is proposing that fines totaling \$ 13,000 be imposed against you for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. Parties

1. The Department of Environmental Services, Water Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. James Lund is an individual having a mailing address of HC 73, Box 811, Alton Bay, NH 03810.

III. Summary of Facts and Law Supporting Claims

1. RSA 483-B, the Comprehensive Shoreland Protection Act, authorizes the Department of Environmental Services ("DES") to regulate development in protected shoreland areas adjacent to surface waters. Pursuant to rulemaking authority conferred therewith, the Commissioner of DES has adopted Env-Ws 1400 to implement the program.
2. RSA 483-B:18, III(c) authorizes the Commissioner of DES to impose administrative fines of up to \$5,000 per offense for violations of RSA 483-B. Pursuant to RSA 483-B:17,V the Commissioner has adopted Env-C 611 to establish the schedule of fines for such violations.
3. RSA 483-B:9, V(a)(2)(A) requires that "[n]ot more than a maximum of 50 percent of the basal area of trees, and a maximum of 50 percent of the total number of saplings shall be removed for any purpose in a 20-year period. A healthy, well-distributed stand of trees, saplings, shrubs and ground covers and their living, undamaged root systems shall be left in place. Replacement planting with native or naturalized species may be permitted to maintain the 50 percent level."
4. RSA 483-B:9, V(a)(2)(E) requires that, "stumps and their root systems which are located within 50 feet of the reference line shall be left intact in the ground, unless removal is specifically

approved by [DES], pursuant to RSA 482-A.”

5. RSA 483-B:9, V(c)(1) requires that, “All new structures within protected shoreland shall be designed and constructed in accordance with rules adopted by [DES] pursuant to [RSA] 541-A, relative to terrain alteration under RSA 485-A:17, for controlling erosion and siltation of public waters, during and after construction.”

6. James Lund is the owner of land located on Trask Road in Alton, NH identified on Alton Tax Map 42 as Lot #30 ("the Property"). The property has 104 feet of frontage on Lake Winnepesaukee.

7. On October 18, 2000, a complaint was received by the Alton Code Enforcement Officer stating that trees were being clear-cut on the Property. The Division was notified by the Town of Alton of the complaint on the same day.

8. On October 20, 2000, Division personnel inspected the Property. During the inspection, Division personnel documented that within the natural woodland buffer of the protected shoreland, a healthy well-distributed stand of trees, saplings, and ground covers was not left in place and more than 50 percent of the basal area of trees had been cut. Also, within an area measuring approximately 150 feet by 82 feet, the ground had been cleared of all stumps and had the appearance of having been tilled/turned over. One birch tree was left standing within the cleared area. Three stumps and several young saplings were left in place along the shoreline. Erosion controls had been installed incorrectly.

9. On October 27, 2000, the Division issued Letter of Deficiency #SP-2000-020 (the "LOD") to James Lund. The LOD informed Mr. Lund of the alleged violations of RSA 483-B and requested that certain remedial actions be taken. Specifically, the LOD requested that the erosion controls be corrected within 48 hours of receiving the LOD and that a revegetation plan be submitted within 30 days of receiving the LOD. The LOD also informed Mr. Lund of the possible penalties for the removal of stumps within 50 feet of the reference line of a public water.

10. Subsequent to issuing the LOD, the Division learned that Mr. Lund is a licensed septic system installer in the state of New Hampshire, license #02852.

11. On November 13, 2000, a member of the Alton Conservation Commission ("ACC") called to inform the Division that the ACC had received complaints alleging that an excavator was being operated "in the lake" at the Property.

12. On December 8, 2000, Division personnel met with Mr. Lund at the Property. The purpose of the site visit was to inspect the "corrected erosion controls" and to discuss Mr. Lund's proposed revegetation plan. During the inspection it was observed that the remaining birch tree had been removed, including the stump. The three stumps that had been observed along the shoreline during the previous inspection could not be located, and all of the remaining saplings had been removed. Additionally, sand had been placed on the lakeward side of the silt fence inches from Lake Winnepesaukee, increasing the potential for siltation into the water.

IV. Violations Alleged

1. James Lund has violated RSA 483-B:9, V(a)(2)(A) by not leaving a healthy, well-distributed stand of trees, saplings, shrubs and ground covers in place.
2. James Lund has violated RSA 483-B:9, V(a)(2)(A) by removing more than 50 percent of the basal area of trees and more than 50 percent of the total number of saplings within the 150 foot natural woodland buffer zone.
3. James Lund has violated RSA 483-B:9, V(a)(2)(E) by not leaving stumps and their root systems located within 50 feet of the reference line intact in the ground.
4. James Lund has violated RSA 483-B:9, V(2)(c)(1) by failing to control erosion and siltation into public waters.

V. Proposed Administrative Fines

1. For the violation identified in IV.1 above, Env-C 611.06(c) specifies a fine of \$4,000 per 150 feet of frontage or portion thereof.
2. For the violation identified in IV.2 above, Env-C 611.06(d)(1) specifies a fine of \$4,000 per 150 feet of frontage or portion thereof.
3. For the violation identified in IV.3 above, Enc-C 611.06(b) specifies a fine of \$1,000 for each stump pulled within 50 feet of the reference line. Although the number of stumps removed is believed to be higher, the Division is only pursuing a fine for the removal of 4 stumps, for a combined fine of \$4,000 for this violation.
4. For the violation identified in IV.4 above, Env-C 603.02(I)(1) specifies a fine of \$1,000.

The total fine being sought is \$13,000.

VI. Hearing, Required Response

You have the right to a hearing to contest the Division's allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, May 7, 2001 at 9:00 a.m. in Room C-110** of the DES offices at **6 Hazen Drive** in Concord, NH. **Pursuant to Env-C 601.06, you are required to respond to this notice.** Please respond **no later than April 13, 2001**, using the enclosed colored form as follows:

- If you plan to attend the hearing, please sign the appearance (upper portion) and return it to James Ballentine, DES Enforcement Paralegal, as noted on the form.
2. If you choose to waive the hearing and pay the proposed fine, please sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.
3. If you wish to discuss the possibility of settling the case, please sign the appearance and

return it to Mr. Ballentine **and** call Mr. Ballentine to indicate your interest in settling.

You are not required to be represented by an attorney. If you choose to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

If you wish to have a hearing but are unable to attend as scheduled, you must notify Mr. Ballentine at least one week in advance of the hearing and request that the hearing be rescheduled. If you do not notify Mr. Ballentine in advance and do not attend the hearing, the hearing will be conducted in your absence in accordance with Env-C 204.09.

VII. Determination of Liability for Administrative Fines

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that you committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that you committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that you prove, by a preponderance of the evidence**, applies in this case:

The violation was a one-time or non-continuing violation, **and** you did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** you did not benefit financially, whether directly or indirectly, from the violation.

- 2 At the time the violation was committed, you were making a good faith effort to comply with the requirement that was violated.
- 3 You have no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
- 4 Other information exists which is favorable to your case which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

The hearing that has been scheduled is a formal hearing. The hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you


committed the violation(s) alleged above and that the fine(s) should be imposed.

The hearing is your opportunity to present testimony and evidence that you did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.

If you have any evidence, such as photographs, business records or other documents, that you believe show that you did not commit the violation(s) or that otherwise support your position, you should bring the evidence to the hearing. You may also bring witnesses (other people) to the hearing to testify on your behalf.

If you wish to have an informal meeting to discuss the issues, you must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.state.nh.us.des). If you have any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.

for 

COPY

Enclosure (NHDES Fact Sheet #CO-2 2000)

cc: Gretchen Rule, DES Enforcement Coordinator
Susan Alexant, DES Hearings and Rules Attorney